

### **REMARKS**

In view of the above amendment, applicant believes the pending application is in condition for allowance.

The Office Action and the prior art relied upon in the previous Office Action have been carefully considered. Applicant thanks the Examiner for holding a telephone interview on April 11, 2006, to discuss the application and the cited prior art. During the course of the interview, the Examiner indicated his feeling that the outstanding rejection of the claims is warranted. In order to expedite the prosecution of the present application, the previous claims 1-15 have been cancelled and in their stead comprehensive claims 16-18 are being submitted for the Examiner's consideration in this Preliminary Amendment to an RCE. These claims are believed to be free of any vague and indefinite language and are further believed to avoid any of the cited prior art.

During the course of the phone interview, the Examiner expressed the feeling that the previously submitted claims lacked sufficient structural distinction from the cited prior art. In his previous rejection, the claims were rejected under 35 USC 102(b) and 103 (a), the Examiner relying on Besenschek (US 6,045,052); Pilsesi (US 6,786,459); and Harkus (US 4,971,247).

During the course of the interview, the Examiner indicated that the corners 32-40 of Besenschek could be likened to the previously defined rail pad projections. Further, the Examiner likened the previously claimed support shoulder projections as being comparable to projections 31 and 32 of the reference (Fig. 2b) since these projections abut the corner projections 40 of the rail pad shown in Fig. 2b.

Besenschek has rail location tabs 32 that are thicker than the rest of the pad and lie near the sides of the support shoulder. The purpose of these tabs is to locate the rail. Because they do not abut the sides of the support shoulder, they do not assist in resisting pad movement. In Besenschek, the tabs 32 are a small portion of the pad corners that project along side the support shoulder and cannot be said to be equivalent to the projections as defined in the present claims. With reference to a possible combination with Pelsesi, the Examiner should be mindful that the

support shoulder 31, 32 does not include projections on the sides to locate a rail pad correctly to leave a recess for the insulator. The projections in Figs. 2b and 4 of Pelsesi are on the rail face of the shoulder, not on the sides of the shoulder abutted by the rail pad projections. The ribs in Pelsesi are there to reinforce the edges of the holes that accommodate the fastening clip. The sides of the support shoulders in Pelsesi cannot contain projections because they contain the holes for a fastening clip. Therefore, one of ordinary skill in the art would certainly not consider Pelsesi to be relevant since its support shoulder is not able to be used with the type of fasteners used in the present invention.

Regarding Harkus, Applicant concedes that resilient tabs are old in the art. However, this references nor the other cited references, taken singularly or any reasonable combination can present a *prima facie* case of obviousness.

In view of the above, consideration and allowance are, therefore, respectfully solicited.

In the event the Examiner believes an interview might serve to advance the prosecution of this application in any way, the undersigned attorney is available at the telephone number noted below.

The Director is hereby authorized to charge any fees, or credit any overpayment, associated with this communication, including any extension fees, to CBLH Deposit Account No. 22-0185, under Order No. 21854-00042-US from which the undersigned is authorized to draw.

Dated: April 25, 2006

Respectfully submitted,

By\_\_\_\_/Morris Liss/\_\_\_\_\_  
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